

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-221096

DATE: February 3, 1986**MATTER OF:**

D.J. Findley, Inc.

DIGEST:

1. Protester has sufficient direct economic interest in contract award to qualify as an interested party eligible to protest solicitation requirements where, although protester at one time advised contracting agency it no longer would compete under such procurements, protester has performed similar services in the recent past; appears to be interested in competing now; and is not otherwise precluded from competing.
2. Bonding requirement for guard services procurement is justified where previous contractors experienced financial difficulties and did not pay guard employees on time and agency reasonably determines that bonding will help eliminate such problems, thereby helping to ensure that guard services will be performed without interruption at facility in need of high level of security.
3. Solicitation's delivery order limitations on man-hours to be ordered under contract are unobjectionable where based on agency's analysis of present needs and the fact that fewer than the maximum hours were ordered from protester under prior contract does not render the maximum limitation inaccurate; the limitation is a maximum, not an estimate of actual hours to be ordered under the contract.
4. Wage determination that is deficient for failing to include federal holiday for Martin Luther King's birthday is not a basis for finding solicitation fatally

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defective where it appears addition of holiday would have no more than a minor impact on the prospective contractor and all bidders competed on an equal basis.

D.J. Findley, Inc. (Findley), protests the award of any contract under invitation for bids (IFB) No. MDA902-86-B-0002, issued by the Department of the Army for security guard services at the Armed Forces Radio and Television Service (AFRTS) Programming Center in Los Angeles. Findley contends that the IFB was deficient in several respects. We deny the protest.

Interested Party

As a preliminary matter, the Army argues that Findley does not qualify as an "interested party" eligible to bring this protest under our Bid Protest Regulations, 4 C.F.R. part 21 (1985), because Findley advised the Army at some point prior to this protest that it was leaving the security guard business and no longer wished to do business with AFRTS. We disagree. A party will be considered to have sufficient interest to protest if it has a direct economic interest in the award of, or failure to award, a contract. AAR Brooks & Perkins, B-220026, Sept. 30, 1985, 85-2 C.P.D. ¶ 358. It appears that Findley, a security guard contractor with the Army in the recent past, has decided that, notwithstanding any view earlier expressed to the Army, it wishes to compete for this award. Since Findley is not precluded from doing so, even if it previously may have advised the Army otherwise, Findley does have a direct interest in the award and, thus, is an interested party eligible to protest alleged solicitation deficiencies.

Bonding Requirement

Findley first contends that the bid, performance, and payment bonds required under the IFB are unwarranted since the contract is not for construction and no valuable government property will be furnished the contractor for performance. Findley concludes that the bonding requirements are unduly restrictive of competition and should be omitted.

Although a bond requirement, in some circumstances, may result in a restriction of competition, it nevertheless can be a necessary and proper means of securing to the government the fulfillment of the contractor's obligations under

the contract in appropriate situations. Renaissance Exchange, Inc., B-216049, Nov. 14, 1984, 84-2 C.P.D. ¶ 534. Contrary to Findley's position, the imposition of bonding requirements is not limited to construction contracts or contracts under which the contractor will be in possession of valuable government property. Under the Federal Acquisition Regulation (FAR), a performance bond may be required "when necessary to protect the government's interest," FAR, 48 C.F.R. § 28.103-2(a) (1984), and a payment bond is proper where a performance bond is required and a payment bond "is in the government's interest." FAR, 48 C.F.R. § 28.103-3(a). A bid bond may be required where performance and payment bonds are required. FAR, 48 C.F.R. § 28.101(a).

We have held that where a decision to require bonding on other than construction contracts is reasonable and made in good faith, we will not question the requirement; the protester bears the burden of establishing unreasonableness or bad faith. Galaxy Custodial Services, et al., B-215738, et al., June 10, 1985, 64 Comp. Gen. ___, 85-1 C.P.D. ¶ 658.

The Army states that bonds were required here due to a need for increased security, combined with the fact that past contractors experienced financial problems during performance. More specifically, the Army explains that films, videotapes and valuable, portable audio-visual equipment kept at the AFRTS facility have been subject to theft in the past, and that, based on a 1985 review, the Department of Defense Inspector General has requested tighter security. The Army also states that financial problems experienced by both Findley, which was the prior contractor (several guards complained of late paychecks, and Findley's insurance company advised it was canceling coverage), and the contractor before Findley, American Mutual Protective Bureau (nonpayment of employees), led the Army to consider the possibility that a contractor's financial problems could jeopardize performance of these critical security services. The Army decided that a contractor's ability to cover a payment bond for the contract amount would virtually guarantee that bonds could be extended or obtained for the option years, if necessary, and that employees would be paid on time, reducing the possibility that guards might be tempted to commit thefts or that they otherwise might become less reliable.

Findley does not argue that the determination was made in bad faith, and we find nothing unreasonable in the Army's

decision to require bonds to help ensure that guards will be paid in a timely fashion, and that the security services thus more likely will be performed without interruption for the initial and optional contract periods. Findley does deny that it or American Mutual ever experienced financial problems under their prior contracts, but this mere disagreement with the agency's factual assertions will not support a finding that the agency falsified its report in this regard. See SALJ of America, Inc., B-217258, Apr. 9, 1985, 85-1 C.P.D. ¶ 408. Accordingly, we deny this aspect of the protest.

Estimated Hours

Findley alleges that the IFB's delivery order limitations, ranging from a minimum of 120 to a maximum of 12,000 man-hours (ordered quarterly), are unrealistic and confusing to prospective offerors. Findley seems to take issue with the maximum, stating that for the past 2 years, guard services have been ordered at a rate of only 3,200 man-hours per month.

The Army anticipates that it will require more man-hours than were required previously. The Army states that under Findley's prior contract, orders ranged from 56 man-hours for an emergency order in response to a bomb threat to 9,856 man-hours for a normal quarterly order. The Army explains that under the contract here, it anticipates not only the quantity of hours ordered previously or the minimum estimated hours called for under the specifications but, due to a planned move of the facility, an additional 16 to 48 hours per day for a 2-3 month period. It was these expectations on which the Army based its delivery order limitations.

We find no basis for questioning the delivery order limitations under the IFB. The limitations clearly were based on the Army's past needs at the facility, as adjusted based on the number of hours anticipated to be necessary in connection with the relocation of the facility. The fact that the maximum limitation exceeds the man-hours actually ordered from Findley in the past is understandable in view of the increase in the Army's guard requirement and the fact that the limitation is a maximum rather than an estimate of the hours actually required. The estimated hours were set forth on the bid schedule.

Wage Determination

Findley maintains that the IFB was defective because it contained a wage determination (78-56 (Rev. 9)) dated August 20, 1985, which listed 9, instead of 10, paid holidays, omitting Martin Luther King's birthday. We fail to see, and Findley has not attempted to explain, how any deficiency in this regard would have had a negative effect on the competition. It appears an additional holiday would have no more than a minor impact on the prospective contractor, and all bidders were competing on the basis of the same wage determination. We thus will not sustain the protest on this ground. See Sea-Land Services, Inc., B-219665, B-219665.2, Dec. 17, 1985, 85-2 C.P.D. ¶ ____.

The protest is denied.

for *Raymond E. Van Cleve*
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General Counsel